Supreme Court, U.S.
FILED
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(1) 94-85

No.

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1993

JOHN A. RAMIREZ,
Petitioner,

vs.

PACIFIC MARITIME ASSOCIATION;
INTERNATIONAL LONGSHOREMEN'S AND
WAREHOUSEMEN'S UNION;
INTERNATIONAL LONGSHOREMEN'S AND
WAREHOUSEMEN'S UNION, LOCAL 18;
INTERNATIONAL LONGSHOREMEN'S AND
WAREHOUSEMEN'S UNION, LOCAL 13,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

JOHN A. RAMIREZ
Petitioner in Pro Se

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55 pp

QUESTIONS PRESENTED

1) Whether the Petitioner/longshoreman was first suspended from work and then, two years later, fired because he reported the Pacific Maritime Association/International Longshoremen's and Warehousemen's Union Officials' racketeering activities in Our West Coast Ports to government agencies.

2) Whether the two district courts properly concluded that the National Labor Relations Board proceedings provided the Petitioner/longshoreman with an fair and full opportunity to litigate all issues and claims and therefore should be given collateral estoppel and res judicata effect and bar Petitioner's State-Law based claim for Wrongful Termination in Violation of Public Policy.

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I. INTRODUCTION

John A. Ramirez, Petitioner in Pro se, prays that the Supreme Court of the United States grant a Writ of Certiorari to review the two judgments below. (Petitioner will be filing a second related petition-CA Case No. 92-16848- on or before July 21, 1994.)

II. OPINION CITED BELOW.

The Memorandum and Order issued and Judgment was entered on May 7, 1993. Appendix A and B.

III. JURISDICTION

The judgment of the United States Court of Appeals for the Ninth Circuit was entered on January 21, 1994. The Court of Appeals then denied Petitioner's timely petition for rehearing and rejected his suggestion for an rehearing en banc on March 18, 1994. Appendix C.

The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1).

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IV. STATUTES

The First Amendment protection of Free Speech and the right to Due Process of law under the Fifth Amendment of the Constitution of the United States.

And California Labor Code section 1102.5 subdivisions (a) and (b) and California Government Code section 12940 subdivision (f). California statutes which provide protection to all employees-unionized or not-against Employer and/or Union retaliation for reporting reasonably suspected unethical, illegal, or criminal conduct in the workplace to government agencies.

V. STATEMENT OF THE CASE.

Petitioner/Longshoreman's case concerns the Pacific Maritime Association/International Longshoremen's Union Officials' pattern of corrupt activity over the past 20 years which has bilked Taxpayers and Consumers out of Millions of dollar.

The following racketeering activities are

widespread and notorious in the longshore industry on the West Coast:

1) PMA/ILWU officials working in concert to prearrange their Class B registrations exclusively for their eighteen year old relatives and friends meaning giving them $60,000.00 or more a year jobs plus important fringe benefits such as medical/dental care by using fraud including mail and wire fraud and deception. These schemes also have enabled PMA/ILWU officials in breach of their fiduciary duty as ILWU/PMA officials Trustees of the ILWU/PMA Benefits Plan to unlawfully retain long-time casual longshoremen's earned but not paid fringe benefits by systemically denying them Class B registration in violation of the Employee Retirement Income Security Act. These schemes have also provided the means by which PMA/ILWU officials have maintained absolute control over the union membership. Casual longshoremen without the right connections no matter how long they have worked in the

longshore industry need not apply.

2) Doubling and Tripling back whereby Union members are permitted by the PMA and Port officials to take two or three eight-hour paid jobs in a single 24-hour period by only actually working four hours of each eight-hour shift in violation of the Collective Bargaining Agreement and of Health/Safety Code which has defrauded the public of it's intangible right to honest services and of it's right to employment opportunities.

3) Padding the Payroll whereby Union officials are permitted by the PMA and Port officials to take two or three eight-hour paid jobs in a single eight-hour shift involving Tax evasion, mail/wire fraud, and kickbacks.

4) And finally the PMA/ILWU's law firms which have so far successfully manipulated-because of it's resources: Billions of dollars-government agencies like the National Labor Relations Board to cover up these illegal activities and to therefore keep intact this

corrupt system.

What the Honorable Judge Cynthia Holcomb Hall stated that PMA/ILWU officials worked in concert to register their relatives and friends was just the tip of the iceberg. Carr v. PMA 904 F.2d 1313, 1320-1324 (9th Cir. 1990).

The Petitioner/longshoreman, with sixteen years of experience in the industry, went first to the National Labor Relations Board to expose these corrupt practices. After the NLRB refused to prosecute the PMA/ILWU but instead chose to cover up this pattern of activity, Petitioner requested other public agencies to not only investigate the PMA/ILWU but also the NLRB.

The result of Petitioner's protected conduct was: suspension from work, unlawful exclusion from the NLRB's settlement agreement with the PMA/ILWU, NLRB General Counsel's deliberate failure to gather or present evidence in Petitioner's suspension and hardship transfer cases in the NLRB (the only cases actually litigated in the NLRB proceedings), Petitioner's

own private attorney deliberate failure to gather or present relevant evidence in the NLRB proceedings plus his participation in the unlawful NLRB settlement (Petitioner has filed an Complaint for Legal Malpractice against his private attorney Kevin S. Robinson), and finally the Petitioner's firing.

The Petitioner has therefore been permanently banned from the longshore industry by the PMA/ILWU with the NLRB's assistance because he called public attention to the PMA/ILWU's corruption and greed in Our West Coast Ports. The Petitioner/longshoreman is just one of the many casualties of the PMA/ILWU's corrupt system.

A. BACKGROUND.

The Port of Sacramento, California, opened in 1963. The PMA/ILWU and affiliate ILWU Local 18 operate a longshore hiring hall in the Port of Sacramento.

Petitioner, John A. Ramirez, worked as a casual longshoreman in Sacramento from 1975 to

1987. Then he was registered as a Class B longshoreman in the Port of Los Angeles and remained so until he was fired in November, 1991. Petitioner's father, Martin Pete Ramirez, was a Local 18 union member from 1963 to 1986.

In the early 1970's there was a casual longshoreman named Jerry Milton. Milton, a part-time worker with no benefits, would work because of the tremendous workload two or three eight-hour paid jobs in a single 24-hour period. Milton being a casual longshoreman without a steady paycheck or fringe benefits therefore worked as much as he could.

Once ILWU Local 18 union members realized that Milton was making more money than they were in a week, they decided that only union members would be permitted to double and triple back.

But ILWU Local 18 members had it better than Milton because whereas Milton had to work the total eight hours of each eight-hour shift, union members would only have to work four hours of each eight-hour shift and therefore would be

paid 24 hours for 12 hours of work. Casual longshoremen would have to cover union members on the job while they were on their four hours off and pick-up the extra workload created by their absence. ILWU Local 18 therefore created this institutionalized dishonest practice on the West Coast. CR. 7 Exhibit C NLRB Transcript pages 436-38 and Exhibit D page 62.

Furthermore, the PMA and the Sacramento Port officials permitted ILWU Local 18 officials to pad the payroll. The Petitioner witnessed on several occasions union officials bouncing from one job to the next during an eight-hour shift and thereby taking two or three eight-hour paid jobs in a single eight-hour shift.

For instance, an ILWU Local 18 Dispatcher would take the gear job on one ship, the gang-boss job on another ship, and the janitor job cleaning the bathrooms for the Port of Sacramento plus receive another eight-hours of overtime pay for dispatching longshore jobs. (In larger ports they have no-show jobs which

union officials regularly take).

ILWU Local 18 union member Eddie Holland Senior - a former Stockton Port President and Sacramento Port President/dispatcher - and Sacramento Port Superintendent David Helmecy were finally convicted of this padding the payroll scheme in April, 1988. Despite Holland's criminal conduct which required his deregistration-firing-under the PMA/ILWU's stated rules, PMA/ILWU officials took no disciplinary action against him. Eddie Holland also participated in the PMA/ILWU Local 18's illegal and criminal Class B longshore registration (1988-89) which resulted in the firing of sixteen Sacramento Class B longshoremen in April, 1991. CR.7 Exhibit B pages 52-53 and Exhibit D page 50.

Despite the tremendous workload in the 1970's and 1980's under which these corrupt practices flourished, PMA-ILWU Local 18 officials refused to register long-time casual longshoremen (casual longshoremen with 10-15

years of longshore skills and experience in the Port of Sacramento) as Class B longshoremen and pay them their earned fringe benefits. By the early 1980's, many of these Sacramento casual longshoremen had already accumulated several "good years" - meaning years inwhich they had worked 480 hours in a given year - credited towards their fringe benefits such as medical/dental care, vacation pay, PGP, and the retirement income plan. The only thing that stopped them from receiving those fringe benefits was the PMA/ILWU's unjustified refusal to register them as Class B longshoremen. CR.7 Exhibit C NLRB Transcript pages 547-550.

And to add injury to insult, PMA/ILWU Local 18 officials would, instead of registering these long-time Sacramento casual longshoremen, transfer registered longshoremen from High Work Opportunity Ports like Los Angeles into the Port of Sacramento. Sacramento casual longshoremen would have to train these transfers on how to load and unload the PMA-Employer members' ships

in the Port of Sacramento.

Petitioner's father fought against these corrupt practices and for Class B registration for these long-time casual longshoremen, but to no avail. He believed in eight hours work, eight hours play, and eight hours sleep. And that therefore Doubling and Tripling back and depriving two other people of jobs was totally against union principles. ILWU Local 18 members were very happy when he retired in 1986. CR. 7 Exhibit C NLRB Transcript pages 436-38.

The PMA/ILWU encouraged these corrupt practices so that the PMA-Employer could employ less people and not have to pay these long-time casual longshoremen their earned but not paid fringe benefits and so that union members could make more money. If you add to this equation the PMA/ILWU officials' fraudulent schemes to register their eighteen year old relatives and friends, then it becomes clear how the PMA/ILWU has profited from this pattern of corruption.

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B. THE PMA/ILWU's ILLEGAL AND CRIMINAL CLASS B LONGSHORE REGISTRATION IN THE PORT OF SACRAMENTO (1988-89).

In 1986, ILWU Local 18 officials' eighteen year old sons started to work as casual longshoremen in the Port.

In 1987, Petitioner and other long-time casual longshoremen were told by ILWU Local 18 officials that there would not be a Class B longshore registration in the Port of Sacramento. Petitioner and others therefore applied for Class B longshore registration in the Port of Los Angeles. Petitioner and two other long-time Sacramento casual longshoremen were registered in Los Angeles in August, 1987.

Four months later, PMA/ILWU Local 18 officials create an identified casual longshore list - ID list - in the Sacramento Port. Petitioner like other long-time Sacramento casual longshoremen qualified for this ID list but wasn't notified by these officials. The creation of this ID list - preferred work list -

was the start of the PMA/ILWU Local 18 officials' plan to register their relatives and friends as Class B longshoremen.

During 1988, ILWU Local 18 officials padded the payroll for their relatives who were on this ID list in anticipation of the criterion to be used for their 1989 Class B longshore registration. The criterion used was 1988 ID casual longshore hours.

On January 19, 1989, these same PMA/ILWU Local 18 officials send by mail an unpublicized referral to the Joint Coast Labor Relations Committee - a Committee composed of the highest ranking officers in the PMA/ILWU which has ultimate control over all Class B registrations and the same Employer/Union officers who are PMA/ILWU Pension Plan Trustees.

The referral stated that Local Sacramento Port PMA/ILWU officials would like to "deviate" from the existing Coastwise Rules of Registration and select new Class B registrants from the identified casual longshore list - ID

list - based on a hours test developed by them.

On January twenty-fifth and February third, 1989, the above stated Coast Committee agreed to this plan by mail and wire which was to register Class B longshoremen by identified casual longshore hours in 1988.

In Mid-February, 1989, PMA/ILWU officials registered sixteen Class B longshoremen in the Port of Sacramento.

Therefore, PMA/ILWU officials working in concert first unlawfully excluded casual longshoremen from their Sacramento Port identified casual longshore list, then padded the payroll, and finally deliberately modified the existing Coastwide Rules of Registration without notifying affected employees to register their relatives and friends.

Petitioner's documentary evidence - the PMA/ILWU's own documents which the NLRB had possession of in September of 1989 - revealed this mail and wire fraud scheme which also violated the National Labor Relations Act. CR.

7 Exhibit B pages 2-9. PMA/ILWU officials finally - without litigation - fired those sixteen Sacramento Class B longshoremen in April of 1991 under an illegal NLRB settlement agreement with the PMA/ILWU.

The National Labor Relations Board also had knowledge of similar Class B registration schemes in the Ports of Los Angeles (1987), Oakland (1988), and San Francisco (1989). In the San Francisco Port even the PMA/ILWU's supposedly neutral Coast Arbitrator Sam Kagel was involved. But as planned, the NLRB found a way to dismiss these cases against the PMA/ILWU.

Therefore, the Port of Sacramento is just an example of how the PMA/ILWU operates in every West Coast Port.

C. THE NLRB PROCEEDINGS.

Petitioner started to call public attention to the PMA/ILWU officials' illegal activities in February, 1989, by filing an NLRB charge and by contacting Congressman Vic Fazio. CR.7 Exhibit B pages 24-26.

Petitioner and other longshoremen filed various NLRB charges with NLRB San Francisco Region 20 from February 21, 1989, to September 25, 1990, covering the Ports of Sacramento, Los Angeles, Oakland, and San Francisco regarding the PMA/ILWU officials' racketeering activities - fraudulent Class B registrations, doubling and tripling back, and padding the payroll.

As the NLRB's part in this cover-up of this corruption, Region 20 proceeded to fail to file or investigate charges, to dismiss cases, to not gather or present relevant evidence, to permit Ex-Region 20 attorney Robert Remar (the ILWU attorney) to suspend Petitioner from work and misrepresent facts to the Administrative Law Judge Jay R. Pollack, to formulate an illegal settlement agreement with the PMA/ILWU to deprive Petitioner of his property/employment rights by excluding him from the Sacramento Port's casual longshore list and from the Port's Class B re-registration process. Petitioner protested to NLRB Chairman James M. Stephens and

General Counsel Jerry M. Hunter about NLRB Region 20's deliberate misconduct, but to no avail. Petitioner also asked other public agencies to not only investigate the PMA/ILWU but also the NLRB. Petitioner believed early on in these proceedings that Region 20 Director Robert H. Miller was assisting his old friend ILWU attorney Robert Remar in protecting the PMA/ILWU's corrupt system. CR.7 Exhibit B pages 31-75.

Furthermore, the only adverse employment actions against Petitioner actually but not fully and fairly litigated - because NLRB General Counsel and his private attorney deliberately failed to gather or present relevant evidence - in the NLRB proceedings were the PMA/ILWU's denial of his transfer from Los Angeles to Sacramento and his suspension from work. Petitioner argued that the PMA/ILWU denied his transfer and suspended him from work because of his protected conduct against the PMA/ILWU.

And the NLRB Administrative Law Judge found that according to the causation test established in the Board's Wright-line test that despite the ILWU officials' expressed animus towards Petitioner because of his protected conduct, that Respondent PMA had legitimate business reasons for denying his transfer from Los Angeles to Sacramento and for placing him on the nondispatch list - no work list. Petitioner/longshoreman's dismissal was not litigated. Nor was the PMA/ILWU's widespread racketeering activities brought forth.

NLRB Region 20 attorney Jonathan Seagle and Petitioner's attorney Kevin Robinson deliberately failed to present documents to the ALJ which directly contradicted the PMA's stated reasons which would have proven that he PMA/ILWU officials' real motivation was retaliation. CR.7 Exhibit B pages 76-95 are notes taken by Robinson from the PMA/ILWU's own documents which Region 20 had possession of but failed to present to the ALJ.

Petitioner did not piece together the facts and law until after his attorney Kevin Robinson turned over his files regarding these matters on November 8, 1991. Petitioner/longshoreman, who had been suspended from work since September 6, 1989, was fired on November 9, 1991. The ALJ had already issued his decision and order on October 16, 1991.

In January and March of 1992, Petitioner did attempt to bring these matters to the Board's attention by appealing the ALJ's decision, but the Board completely ignored one brief and then rejected his second brief.

Petitioner/longshoreman did not receive due process of law in the NLRB proceedings because of Fraud, Misrepresentation, and other misconduct.

D. THE UNITED STATES NORTHERN CALIFORNIA DISTRICT COURT PROCEEDINGS.

After the Board refused to consider the Petitioner's relevant evidence, he filed an Complaint for Retaliatory Discharge in this

district court on April 28, 1992. (This is the related Appeal case no. 92-16848 which Petitioner will file on or before July 21, 1994.)

In this Complaint, Petitioner stated that the NLRB had covered up the PMA/ILWU's illegal activities in Our West Coast Ports. CR. 1 pages 4, 18-19.

On July 28, 1992, the Board reaffirmed the Administrative Law Judge's findings as to only the denial of Petitioner's transfer and suspension from work. Petitioner/longshoreman did not appeal this decision.

On October 2, 1992, the district judge held a hearing. Respondents moved for summary judgment based on the ALJ's findings - collateral estoppel-to bar Petitioner's claim for wrongful discharge.

The district judge decided, without giving the Petitioner an opportunity to present his documentary evidence, that the ALJ had decided all issues and claims, despite the fact that

the Petitioner's discharge without just cause was not litigated by the ALJ. CR.32 page 9 lines 26-27. Petitioner argued that the NLRB proceedings had failed to comply with due process and were tainted by fraud, misrepresentation, and other misconduct, but the judge proceeded to dismiss the Complaint. Transcript pages 1-15 of this district court hearing.

E. THE UNITED STATES EASTERN CALIFORNIA DISTRICT COURT PROCEEDINGS.

After the Northern California district court failed to provide Petitioner with an opportunity to present his documentary evidence, he filed an Complaint for Wrongful Termination in Violation of Public Policy in California Superior Court of Yolo County on October 28, 1992.

Respondents proceeded to remove this action from State court claiming that it involved an Federal question. Respondents then moved for dismissal based on the doctrines of collateral

estoppel and res judicata. Petitioner filed his opposition with his documentary evidence in this court.

Petitioner opposed Respondents' motion by showing that PMA/ILWU officials and their attorneys had knowledge of the Petitioner's protected conduct, that adverse employment actions against him occurred within days of his protected conduct, that he was treated differently than similarly situated employees, that their stated reasons for denying his Class B registration and transfer (Sacramento Port), and for suspending him from work were false, and that PMA/ILWU officials failed to follow their own stated rules regarding his termination.

Therefore, Petitioner had put forth sufficient evidence of knowledge of protected conduct, timing of adverse employment actions, and of the unusual treatment of the employee to defeat a motion for summary judgment.

Although the district judge noted that it might be prudent to stay the action until after

the first appeal was resolved, he declined to do so. Appendix A, page 7, footnote 3.

Instead, the judge proceeded to grant summary judgment for Respondents based on the prior district court's judgment - res judicata - and bar Petitioner's state-law based claim for wrongful termination.

VI. REASONS FOR GRANTING THE PETITION.

It is important for the Court to review the two judgments below because if the PMA/ILWU officials are permitted to fire Petitioner with impunity, then this will reinforce their corrupt system and will have a chilling effect upon the Constitutional and Statutory rights of all employees.

PMA/ILWU officials have so far successfully utilized the Petitioner's suspension from work, his unlawful exclusion from the NLRB settlement, and his dismissal - which has blackballed Petitioner from the longshore industry - as an example to other longshoremen of what happens to a longshoreman who chooses to speak out against

their system.

PMA/ILWU officials still have iron-clad control over who works and who is registered. A longshoreman makes approximately $200.00 dollars for an eight-hour shift. Class B registration provides a longshoreman with a $60,000 or more a year job plus fringe benefits. Yes the power of employment is a very strong weapon against dissent. (The ILWU is not a Union, but a social club whereby membership is granted to the select and privileged few.)

Petitioner/longshoreman reported the PMA/ILWU officials' unethical, illegal, and criminal conduct to government agencies. Is this the type of conduct we want to discourage? Do we want employees to remain silent when they reasonably suspect illegal conduct in the workplace?

The Court should therefore grant review and reaffirm every employee's right to freely exercise his or her Constitutional and Statutory rights without fear of retaliation.

And send a message to the PMA/ILWU that the status quo of depriving the public of employment opportunities and of it's intangible right to honest services, of unlawfully retaining casual longshoremen's earned but not paid fringe benefits from them and their beneficiaries, and of providing lucrative employment - Class B registration - to only their eighteen year old relatives and friends must change because this corrupt system is hurting too many people and , more importantly, costing the Taxpayers and Consumers too much money. We must therefore move to eliminate this corruption and greed - cancer - from OUR WEST COAST PORTS.

For the past 20 years, PMA/ILWU officials have treated long-time casual longshoremen without the right connections like disposable objects. These real human beings who have worked hard for 10-25 years in the industry deserve better because a just wage including earned but not paid fringe benefits is the legitimate fruit of work. To refuse or withhold

it is a grave injustice. Unfortunately, in the longshore industry on the West Coast, injustice and dishonesty is the status quo.

I, the Petitioner, by registered letter dated May 9, 1994, have asked NLRB Chairman William Gould to restructure the NLRB's settlement agreement with the PMA/ILWU in the Port of Sacramento so that long-time Sacramento Casual longshoremen are given preference for Class B longshore registration. I have therefore asked the NLRB to implement the fair and just principle of rewarding work by using as the main criterion Sacramento casual longshoremen's total longshore hours in the Port of Sacramento since 1968. And rewarding those casual longshoremen with the most longshore hours since 1968 with Class B longshore registration. The PMA-Employer has kept computerized records of all casual longshoremen's hours since 1976. Therefore, a simple and just proposal.

But so far, the NLRB has refused to listen.

Instead, the NLRB and PMA/ILWU have insisted on using irrelevant rules and tests to re-register Class B longshoremen in the Port of Sacramento. The preferred method of the PMA/ILWU so that they can pick and chose their relatives and friends and exclude these long-time casual longshoremen without the right connections.

I have also requested that fifty Sacramento casual longshoremen be registered as Class B longshoremen in the Port of Sacramento by this concept of rewarding work because of the tremendous workload- the Port started to export thousands of tons of Rice to Japan in October of 1993-and because this would reduce the amount of Doubling-Tripling back and padding of the payroll in the Port. If there is any doubt as to whether the PMA-Employer can support these fifty additional positions, then I would suggest that the NLRB review the PMA's payroll records for 1994 as provided by this settlement agreement. The NLRB would soon discover that the PMA-Employer has enough work-jobs-for 100

additional Class B longshoremen in the Port of Sacramento.

I have therefore asked this public agency, the NLRB which is supposed to promote and protect the public good, to register/include people by rewarding work. In other words, to do the right thing.

There are several Sacramento casual longshoremen who have loaded and unloaded the PMA-Employer members' ships in the Port of Sacramento since 1968 who have yet to receive their earned but not paid fringe benefits, i.e. Class B longshore registration. And some have already died - their relatives/beneficiaries should at least receive from the PMA/ILWU some type of severance pay for their many years of longshore service.

Since there is not a school of longshoring, shouldn't Class B longshore registration be granted to those who have worked for it? And not just to the PMA/ILWU officials' eighteen year old relatives and friends with little or no

longshore experience?

So far the NLRB has chosen to protect the PMA/ILWU officials' corrupt system and to proceed with this unethical and illegal - if not criminal - settlement agreement at the expense of the public good.

The PMA/ILWU has been violating the public trust for the past 20 years. When will this stop.

VII. CONCLUSION.

Therefore, the Court for the above reasons should grant the Petition. Thank you.

DATED: June 16, 1994 Respectfully submitted.

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APPENDIX A

FILED

May 7, 1993

Clerk U.S. District Court
Eastern District of California
By: _____

IN THE UNITED STATES DISTRICT COURT FOR

THE EASTERN DISTRICT OF CALIFORNIA

JOHN A. RAMIREZ,

Plaintiff,

v.

PACIFIC MARITIME ASSOCIATION; INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S UNION; ILWU LOCAL 18; and ILWU LOCAL 13,

Defendants.

_____/

This matter is before the court on defendants' motion for summary judgment. After reviewing the record and the documents filed in support of and in opposition to the motion, the court has determined that this matter is appropriate for resolution without

oral argument. See Local Rule 230(h). Accordingly, the hearing set for May 14, 1993, is vacated and the matter is ordered submitted. For the reasons set forth below, the court grants defendants' motion and dismisses the complaint.

BACKGROUND[1]

Plaintiff's complaint alleges that he was wrongfully terminated from his job as a longshoreman in 1991, in violation of public policy. He contends that he was fired in retaliation for filing contractual grievances concerning defendant ILWU Local 18's allegedly illegal registration of Class B longshoremen in the Port of Sacramento. In addition, plaintiff's lawsuit appears to challenge defendants' decision not to allow

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[1] The facts recited in this order are taken from a multitude of documents. In that connection, the court grants defendants' judicial decisions involving these parties, both before the National Labor Relations Board and the united States District Court of the Northern District of California.

him a hardship transfer from the Port of Los Angeles to the Port of Sacramento.

The present lawsuit is but one of several avenues of redress the plaintiff has pursued in the last four years to protest defendants' failure to allow plaintiff to register as a longshoreman in the Port of Sacramento. Along the way he has filed several charges of unfair labor practice with the National Labor Relations Board ("NLRB"), has appealed administrative rulings which were adverse to him, and has filed two lawsuits against the defendants arising out of his termination.

On October 16, 1991, NLRB Administrative Law Judge Jay Pollack issued a lengthy and thorough decision finding that plaintiff was not entitled to either a hardship transfer or to registration as a Class B longshoreman in Sacramento. **Exhibit B, attached to Defendants' Request for Judicial Notice.** This decision was

subsequently affirmed on appeal on July 28, 1992 by a three-member panel of the NLRB. **Exhibit C, attached to Defendants' Request for Judicial Notice.** Meanwhile, on April 28, 1992, plaintiff filed "A Complaint By An Employee Against An Employer And Union For Retaliatory Discharge" in the United States District Court for the Northern District of California. **Exhibit A, attached to Defendants' Request for Judicial Notice.** Judge Marilyn H. Patel granted defendants' motion for summary judgment and dismissed this complaint by order filed October 16, 1992, finding that plaintiff's claim was barred by the doctrine of collateral estoppel. **Exhibits D & E, attached to Defendants' Request for Judicial Notice.** Plaintiff appealed this ruling on November 2, 1992, which appeal is presently pending before the Ninth Circuit Court of Appeals. **Exhibit F, attached to Defendants' Request for Judicial Notice.** Finally, on October

28, 1992, before filing his notice of appeal in the federal case, plaintiff filed the instant complaint in the Yolo County Superior Court. Defendants removed the case to this court alleging federal question jurisdiction.

DISCUSSION

Defendants move for summary judgment on the grounds of res judicata and collateral estoppel, contending that plaintiff is barred from pursuing the claims raised in this case because of the judgment entered against him by Judge Patel. Plaintiff's opposition does not directly discuss this issue. Instead, plaintiff argues that the NLRB decisions were fraudulent and should be vacated and that judge Patel's decision was erroneous. Even if both these allegations are correct, this court is not the proper forum for contesting the validity of those prior decisions. Plaintiff had an opportunity to, and did, challenge the NLRB

decision through the proper administrative channels. His appeal however, was denied. In addition,, plaintiff is currently challenging Judge Patel's decision by way of his pending appeal in the Ninth Circuit. In any event, the court finds that the claims raised in the instant complaint were either litigated or could have been litigated before Judge Patel in the Northern District action. Accordingly, they are barred by the doctrine of res judicata.

"A final judgment on the merits of an action precludes the parties . . . from relitigating issues that were or could have been raised in that action." Federated Department Stroes v. Moitie, 452 U.S. 394, 398 (1981). A final judgment is any prior adjudication in another action that is deemed "sufficiently firm" to be given conclusive effect. See Robi v. Five Platters, 838 F.2d 318, 326 (9th Cir. 1988), citing Restatement (Second) of Judgments 13

(1982). Since a decision by a court of competent jurisdiction is presumptively correct, the pendency of an appeal in the Northern District action is not of sufficient moment to preclude application of res judicata to the present case if the other requirements of that doctrine are met. See Wright, C., Miller, A. & Cooper, E., Federal Practice & Procedure 4433 (1981) ("in federal courts . . . the preclusive effects of a lower court judgment cannot be suspended simply by taking an appeal that remains undecided").

Plaintiff's first lawsuit was a complaint for retaliatory discharge. The instant lawsuit, which names the identical defendants as those in the first action, is a complaint for wrongful termination in violation of public policy. The present complaint, while 15 pages shorter than the first complaint, arises from the same set of facts and makes the same allegations against

the defendants as the first complaint. the only difference appears to be that the plaintiff did not expressly articulate a cause of action for wrongful termination in violation of public policy in the first complaint. However,

> under federal law, [plaintiff] does not avoid the bar of res judicata merely because he now alleges conduct by [defendant] not alleged in his prior suit, nor because he has pleaded a new legal theory. Rather, the crucial question is whether [plaintiff] has stated in the instant suit a cause of action different from those raised in his first suit.

Costantini v. Trans World Airlines, 681 F.2d 1199, 1201 (9th Cir. 1982).[2]

The Ninth Circuit uses the following criteria to determine if successive lawsuits involve the same cause of action: 1)

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[2] Since the judgment to which defendants seek the application of res judicata was rendered by a federal court, the preclusive effect of judgment is determined by federal common law. Western Systems, Inc. v. Ulloa, 958 F.2d 864, 871 n.11 (9th Cir. 1992), citing Robi v. Five Platters, 838 F.2d 318, 322 (9th Cir. 1988).

whether prosecution of the second action will impair or destroy rights or interests established in the prior judgment; 2) whether the actions involve substantially the same evidence; 3) whether both actions involve infringement of the same right; 4) whether both actions arise out of the same transactional nucleus of facts. Costantini, 681 F.2d at 1201-01, quoting Harris v. Jacobs, 621 F.2d 341, 343 (9th Cir. 1980).

Here, all four requirements are met. First, defendants effectively defended the first lawsuit and have right to rely on the judgment entered in that case. Failure to give preclusive effect to the first judgment will impair defendants' rights by requiring them to litigate again issues previously decided in their favor. Second, a review and comparison of plaintiffs' opposition to the present motion with the findings of the Administrative Law Judge and Judge Patel,

make it abundantly clear that the admissible evidence presented in both actions will be virtually identical. Third, it is beyond question that both lawsuits involve infringement of the same right. In both cases plaintiff seeks compensatory and punitive damages resulting from his termination by defendants. Finally, a comparison of the complaints in both actions demonstrates that they arise from the same facts. Plaintiff does not dispute this. In fact, he does not argue that the actions are dissimilar, instead, he merely disagrees with the decisions in the first two forums, arguing that the NLRB's decision was fraudulent and that Judge Patel's decision was erroneous.

It is apparent that the cause of action alleged in the instant case is but a separate legal theory upon which plaintiff seeks recovery, based on the same set of facts which underlie the first action. Accordingly, the doctrine of res judicata precludes plaintiff's second lawsuit and defendants' motion for summary judgment is granted. The Clerk of Court is directed to enter judgment in accordance with the court's ruling.[3]

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[3] As discussed above, the pendency of an appeal in the Northern District action does not preclude dismissal of this case based on application of res judicata. while it might be prudent to stay the present case until after the appeal is resolved, the court is not inclined to do so. However, the court notes that in the event plaintiff's appeal in that action is successful, it will be necessary to set aside the judgment in this case pursuant to Federal Rule of Civil Procedure 60 (b) (5). See Ornellas v. Oakley, 618 F.2d 1351, 1356 (9th Cir. 1980) (reversed judgment cannot serve a basis for disposition of subsequent action on res judicata grounds). See also, Wright, C., Miller A. & Cooper, E., Federal Practice & Procedure 4433, at 311 ("a second judgment based upon the preclusive effects of the first judgment should not stand if the first judgment is reversed").

IT IS SO ORDERED.

Dated: May _____, 1993

_____
EDWARD J. GARCIA, JUDGE
UNITED STATES DISTRICT COURT

APPENDIX B

FILED

MAY 7, 1993

CLERK U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

BY _____

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

John A. Ramirez **JUDGMENT IN A CIVIL CASE**

v. CASE NUMBER: CIV S 93-171 EJG JFM

Pacific Maritime Assoc et al

CLOSED
DATE: MAY 7

XX - - **Decision by the Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

THAT JUDGMENT IS HEREBY ENTERED IN ACCORDANCE WITH THE COURT'S ORDER OF 5/7/93.

Jack L. Wagner,
Clerk of the Court

ENTERED: May 7, 1993

by: _____
A Bowser, Deputy Clerk

APPENDIX C

FILED

JAN 21 1994

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOHN A. RAMIREZ

Plaintiff-Appellant,

v.

PACIFIC MARITIME ASSOCIATION INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION; INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, LOCAL 18; INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, LOCAL 13,

Defendants-Appellees.

No. 93-15941

D.C. No. CV-93-00171-EJG (J

MEMORANDUM*

Appeal from the United States District Court for the Eastern District of California
Edward J. Garcia, District Judge, Presiding

Submitted January 18, 1994[4]
Before: REINHARDT, O'SCANNLAIN and KLEINFELD, Circuit Judges.

John A. Ramirez appeals pro se from the district court's grant of summary judgment in favor of Pacific Maritime Association and the International Longshoremen's and Warehousemen's Union Locals 13 and 18 in his action alleging retaliatory discharge in violation of Cal. Labor Code § 1102.5. After this case was removed from California Superior Court to the federal district court, the district count granted summary judgment on res judicata grounds. We have jurisdiction under 28 U.S.C. § 1291.

We agree with the district court's conclusion that the instant action is precluded by the prior decision of the United States District Court for the Northern District of California in Docket No. CV-92-01579-MHP, affirmed this day by

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** The panel unanimously finds this case suitable for decision without oral argument. Fed. R. App. P. 34 (a); 9th Cir. R. 34-4

separate memorandum disposition, and affirm for the reasons stated in district court order.

AFFIRMED.

FILED

MAR 18 1994

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOHN A. RAMIREZ

Plaintiff-Appellant,

v.

PACIFIC MARITIME ASSOCIATION INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION; INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, LOCAL 18; INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, LOCAL 13,

Defendants-Appellees.

No. 93-15941

D.C. No. CV-93-00171-EJG
Eastern California

ORDER

Before: REINHARDT, O'SCANNLAIN, and KLEINFELD, Circuit Judges.

The panel has voted to deny appellant's petition for rehearing and to reject the suggestion for rehearing en banc.

The full court has been advised of the suggestion for rehearing en banc and no

active judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

The petition for rehearing is DENIED and the suggestion for rehearing en banc is REJECTED.